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ALEXANDER L. STEVAS.

CLERK

Nos. 82-927 and 82-936.

**In the
Supreme Court of the United States**

OCTOBER TERM, 1982

**FREDERICK C. LANGONE, ET AL.,
APPELLANTS,**

v.

**MICHAEL J. CONNOLLY, AS HE IS
SECRETARY OF STATE OF THE
COMMONWEALTH OF MASSACHUSETTS, ET AL.,
APPELLEES.**

**ON APPEAL FROM THE SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS**

Motion to Dismiss.

**JOHN KENNETH FELTER, COUNSEL
OF RECORD,
SAMUEL HOAR,
GOODWIN, PROCTER & HOAR,
28 State Street,
Boston, Massachusetts 02109
(617) 523-5700**

**COUNSEL FOR APPELLEE,
MICHAEL J. CONNOLLY, AS HE
IS SECRETARY OF STATE OF
THE COMMONWEALTH OF
MASSACHUSETTS**

QUESTION PRESENTED

Whether the Massachusetts Democratic Party may require by its Charter that, in order for the name of a candidate for statewide office to appear upon the Democratic state primary ballots, the candidate must receive at least fifteen percent of the vote of the delegates, on any ballot, at the Massachusetts Democratic Endorsing Convention?/1/

/1/ Plaintiffs-appellants are Frederick C. Langone ("Langone"), Madeline G. Sarno, Victor Grillo, Louis Ferretti, Gail A. Fasano, and The Langone for Lieutenant Governor Committee (collectively referred to as "Langone supporters"). Plaintiff Joel E. Pressman ("Pressman") did not file a notice of appeal. Intervenor-plaintiff-appellant is the Attorney General of the Commonwealth of Massachusetts ("Attorney General").

Defendants-appellees are Michael J. Connolly, as he is Secretary of State of the Commonwealth of Massachusetts ("State Secretary"), Massachusetts Democratic State Committee, Evelyn F. Murphy ("Murphy"), John F. Kerry ("Kerry"), Louis R. Nickinello ("Nickinello"), Lois G. Pines ("Pines"), and Samuel Rotondi ("Rotondi").

MOTION TO DISMISS

Appellee Michael J. Connolly, as he is Secretary of State of the Commonwealth of Massachusetts, moves to dismiss the appeals^{/2/} in the above-entitled case on the grounds that the appeals do not present a substantial federal question and that the Order and Judgment of the Massachusetts Supreme Judicial Court is correct because it accords with applicable decisions of this Court. Sup. Ct. R. 16.1.(b),(d).

/2/ The Jurisdictional Statement of the Attorney General of the Commonwealth of Massachusetts ("AG Jur. St.") was received on December 3, 1982 (No. 82-927). The Jurisdictional Statement of Langone and Langone supporters, ("Lang. Jur. St.") was received on December 6, 1982 (No. 82-936). This Motion to Dismiss replies to both Jurisdictional Statements. Sup. Ct. R. 16.1.

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ORDER AND JUDGMENT OF THE
MASSACHUSETTS SUPREME JUDICIAL COURT

The opinion of the Massachusetts Supreme Judicial Court has not been delivered. On July 6, 1982 the court did issue an Order (Appendix ("App.") 11) and rescript (App. 14), see Mass. Gen. Laws ch. 211, §§8, 9, and the Massachusetts Supreme Judicial Court for Suffolk County entered a Judgment on the rescript on July 7, 1982 (App. 15).

Although no opinion has been delivered in this case, appellants acknowledge that the unanimous advisory opinion issued by the Justices of the Supreme Judicial Court on April 23, 1982, Opinion of the Justices, 385 Mass. 1201, 434 N.E. 2d 960 (1982), analyzes and determines similar substantive issues. (AG Jur. St. at 2, 21-23, 25;^{/3/} Lang. Jur. St. at

^{/3/} For example, the Attorney General notes:
(Footnote Continued)

15-17, 19, 42-43, 49). The State Secretary also believes that the opinion in this case will comport with the logic and reasoning incorporated in the Opinion of the Justices.

JURISDICTION OF THIS COURT

Appellants contend that "it is not possible" to "specify" "the jurisdictional basis for this appeal" because no opinion has been delivered by the Supreme Judicial Court. They propose that this Court may have jurisdiction grounded on two possible bases. Appellants suggest that the Supreme Judicial Court may either uphold the "constitutionality of the Massachusetts statutory scheme for

/3/ (Footnote Continued)

"The Supreme Judicial Court has issued a related opinion which presented a question similar to that presented here." (AG Jur. St. at 2 n.2). And he "assumes that the logic of the advisory opinion will be reflected in the decision in this case." (Id. at 21).

obtaining access to state primary ballots in light of a challenge that the statutes are repugnant to the Constitution of the United States" or that the court may "hold that the Massachusetts statutory scheme fails to protect the political associational rights of the members of the state Democratic party and is therefore repugnant to the Constitution of the United States." (AG Jur. St. at 3-5; Lang. Jur. St. at 2-4). Appellants' contention and hypothetical holdings are disingenuous.

At the outset, it is important to realize that no party in this case has ever challenged the constitutionality of any statute. Thus, the jurisdictional bases invoked by appellants are inapposite. The Order and Judgment of the Supreme Judicial Court show plainly that this case resolves a contest only between

the constitutionally-recognized associational rights of the Massachusetts Democratic Party, manifested in part by its Charter, and the alleged rights of Langone and Langone supporters. (App. 11, 15).^{/4/} No statute is attacked. See, e.g., Slagle v. Ohio, 366 U.S. 259, 264 (1961) (failure to show that any explicit and "timely insistence [was made] in the state courts that a state statute, as applied, is repugnant to the federal Constitution"; appeals dismissed) (quoting Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182, 185 (1945)).

^{/4/} The joint Petition for Transfer from the trial court to the Supreme Judicial Court for Suffolk County identifies the issue in this case as the "validity and enforcement of the 'fifteen percent rule'" contained in Article Six, Section III of the Charter of the Democratic Party of the Commonwealth. (App. 1).

Therefore, appellants' only available remedy for review by this Court is certiorari because this case involves a final judgment rendered by the highest court of Massachusetts where rights are claimed under the United States Constitution. 28 U.S.C. §1257(3). See, e.g., Coleman v. Miller, 307 U.S. 433, 438 (1939). And, although appellants characterize the nature of these proceedings as appeals, this Court should regard and act on their Jurisdictional Statements as if they seek review by writ of certiorari.^{/5/} 28 U.S.C. §2103. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 562-63 n.4 (1980) (validity of state statute "not sufficiently drawn in

/5/ For ease of reference, the State Secretary will continue to refer to the Attorney General and Langone and Langone supporters as appellants and the nature of these proceedings as appeals.

question" to invoke appellate jurisdiction); Garrity v. New Jersey, 385 U.S. 493, 496 (1967) (state statute "too tangentially involved to satisfy" statutory appellate jurisdiction).

CONSTITUTIONAL PROVISIONS
AND STATUTES INVOLVED

The Attorney General proffers arguments and Langone and Langone supporters assert claims allegedly based on or arising under the First and Fourteenth Amendments to the United States Constitution. In addition, several sections and provisions of the Massachusetts statutes pertaining to political parties, conventions, nominations, primaries, caucuses and elections are referred to in appellants' Jurisdictional Statements and herein.^{/6/} They

^{/6/} Mass. Gen. Laws ch. 50, §1; ch. 52, §§1, 10; ch. 53, §§1-3, 6, 9, 13, 25, 35B, 37, 38, 40, 44, 45, 46, 48, 54, 54C, 54D (§§54C, 54D, repealed by 1973 Mass. Acts ch. 429, §5); ch. 55A, §2.

are set out verbatim in the Appendix.
(App. 18-47).

STATEMENT OF THE CASE

This case was commenced on or about June 2, 1982 in the Superior Court Department of the Massachusetts Trial Court by Langone and Langone supporters against the State Secretary. In their complaint they alleged that the State Secretary had deprived them of various rights guaranteed by the United States Constitution as the result of his decision not to place Langone's name upon the Democratic state primary ballots. Langone and Langone supporters requested an injunction enjoining the State Secretary from failing to place Langone's name upon the ballots for the office of Lieutenant Governor for the Democratic state primary to be held on September 14, 1982.

A motion by the State Secretary to join additional, indispensable parties was allowed by the Superior Court on June 4, 1982. Thus, Evelyn F. Murphy ("Murphy"), John F. Kerry ("Kerry"), Louis R. Nickinello ("Nickinello"), Lois G. Pines ("Pines") and Samuel Rotondi ("Rotondi") and the Democratic State Committee were joined as defendants and Joel M. Pressman ("Pressman") was joined as plaintiff.^{/7/}

The State Secretary answered the complaint and filed counterclaims and cross-claims on June 8, 1982 praying for a declaration of the "rights, duties, status and other legal relations of all the parties under Article Six, Section III of the Charter of the Democra-

^{/7/} As explained, infra p. 19 & n.13, Murphy, Kerry, Nickinello, Pines and Rotondi were similarly situated as were Langone and Pressman.

tic Party of the Commonwealth, ["fifteen percent rule"] as interpreted and applied in the Opinion of the Justices, 385 Mass. 1201 (1982), and Chapters 52 and 53 of the General Laws."

The Attorney General intervened as a party plaintiff on June 9, 1982 and the next day filed a complaint seeking declaratory relief and an order requiring the State Secretary to place the names of Langone and Pressman upon the Democratic state primary ballots.

A joint Petition for Transfer to the Supreme Judicial Court for Suffolk County (App. 1) was allowed on June 11, 1982, see Mass. Gen. Laws ch. 211, §4A, and, upon motion by all parties, on June 18, 1982 the case was reserved and reported to the Supreme Judicial Court, see Mass. Gen. Laws ch. 211, §6. (App. 8). The case presented two questions of law to

that court upon the pleadings and a
Statement of Agreed Facts: /8/

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth"?
2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth", but otherwise complied with the statutory requirements to have their names placed [sic] upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?

/8/ All factual statements contained herein are derived from the Statement of Agreed Facts.

The Supreme Judicial Court answered both of the questions "no" and explained that "we interpret the State statutes in light of the State and Federal constitutions and rule that the [State] secretary must give effect to the relevant charter provision." (App. 12).

In other words, the court held that, because Langone failed to satisfy the Massachusetts Democratic Party's "fifteen percent rule", his name may not appear upon the Democratic state primary ballots and, moreover, the decision of the State Secretary not to place Langone's name upon those ballots did not violate the constitutional or statutory rights of Langone or Langone supporters.

ARGUMENT

I. INTRODUCTION

A. HISTORY OF THE PARTY CHARTER AND THE FIFTEEN PERCENT RULE

A brief exposition of the events

antecedent to the adoption of the Massachusetts Democratic Party's Charter will illuminate the question presented for review by this Court, supra p. i. See Democratic Party of the United States v. Wisconsin, 450 U.S. 107, 115-20 (1981). The following history is summarized from the Statement of Agreed Facts:

In 1976, the Massachusetts Democratic Party was in disarray. As one unsuccessful Democratic candidate for the United States Congress lamented, there was "almost no real Democratic Party organization in this state at the local level." The deterioration at the grass roots was attributed by many Party leaders to the legislative elimination in 1973 of statutorily-prescribed pre-primary conventions. Mass. Gen. Laws ch. 53, §§ 54, 54C, 54D (App. 42-44), repealed by 1973 Mass. Acts ch. 429, §5.

To remedy the problems, the 1977 Party Issues Convention mandated the creation of a Charter Commission to draft a proposed charter. At hearings held by the Charter Commission, attended by several hundreds of Democrats across Massachusetts, several themes emerged: organizational decay at the grass roots, weakness of the Democratic State Committee and absence of party discipline and accountability.

The Charter Commission devoted special attention to the candidate endorsement process. The origins of the "fifteen percent rule" can be traced to discussions and debates concerning the "Connecticut challenge primary system." See Tansley v. Grasso, 315 F.Supp. 513 (D. Conn. 1970) (three-judge court). The Chairman of the Amherst Democratic Town Committee advocated the system:

I want to urge a return to the pre-primary endorsement convention. And I want also to urge that its actions be given greater weight as to eventual party nominations. In that regard, I commend to your attention the convention and the "challenge" primary system used in the State of Connecticut, whereby candidates endorsed by party conventions are automatically on the primary ballot while others may challenge only if they have received 20% of the votes cast on any ballot for that office at the particular convention. This guarantees party control over nominations, but at the same time protects the rights of significant minorities within the party. (emphasis supplied).

A Charter Convention was held on May 19, 1979. It was reconvened on November 17, 1979 for the purpose of completing its deliberations on the proposed charter. The provisions of the "fifteen percent rule", as they currently read, and the entire Party Charter were adopted on November 17, 1979. The Party

Charter was adopted by a vote of 609 to 123. /9/

/9/ Langone and Langone supporters argue that the "Democratic Party took several actions indicating that it never intended, nor did it believe, that Article Six, Section III would take effect absent enabling legislation." (Lang. Jur. St. at 13-15, 43-44). They rely heavily on mailings made by the Democratic State Committee.

The argument is in the nature of an estoppel. It has fatal weaknesses. Nothing in the record suggests that the mailings were intended to induce action or inaction by anyone. Langone and Langone supporters do not allege that they were aware of, or relied on, the mailings. Furthermore, the record negatives any claim that these mailings caused Langone or Langone supporters a detriment. See infra pp. 60-64. The record is devoid of facts to support estoppel in this case. See, e.g., DeSisto's Case, 351 Mass. 348, 351-52, 220 N.E.2d 923, 925 (1966).

Langone and Langone supporters intimate that the failure of the General Court to pass certain bills illustrates legislative displeasure with the "fifteen percent rule" or supports their argument that legislation was necessary to implement it. (Lang. Jur. St. at 15). However, legislative silence is not indicative of legislative intent. See Monaghan, The Supreme Court, 1974 Term-Foreword: Constitutional Common Law, 89

(Footnote Continued)

Article Six, Section III of the
Party Charter provides:

There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the proviso that any nominee who receives at least 15 percent

/9/ (Footnote Continued)

Harv. L. Rev. 1, 16-17 (1975). Possible reasons for legislative inaction are numerous. H.M. Hart and A. Sacks, The Legal Process: Basic Problems in the Making and Application of Law 1395-96 (tent.ed. 1958). See Helvering v. Hallock, 309 U.S. 106, 119-20 (1939).

Regardless of the interpretation assigned to legislative inaction, in this case it does not pertain because the General Court did act. It passed House Bill No. 5852. See infra pp. 21-24. Therefore, if any significance is attributed to legislative behavior in this case, it must be that the General Court was aware that legislation was necessary to attempt to override the force and effect of the "fifteen percent rule." See Opinion of the Justices, 385 Mass. at 1206, 434 N.E.2d at 963.

of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election. Opinion of the Justices, 385 Mass. at 1202, 434 N.E. 2d at 960-61.

B. 1982 PARTY CAUCUSES AND
ENDORISING CONVENTION

The 1982 Party caucuses and the Endorsing Convention were truly "democratic." /10/

Delegates to the Endorsing Convention were elected at caucuses held in each ward and town of Massachusetts on

/10/ The Attorney General's attempts to denigrate Massachusetts Democratic "party regulars" are curious. See, e.g., AG Jur. St. at 13, 15, 20, 21-31. In the Opinion of the Justices the terms "regular party members" or "regular members of the party" are synonyms for enrolled party members to distinguish them from the "unenrolled voters who enroll at the polls just before receiving ballots", see Mass. Gen. Laws ch. 53, §37 (App. 28), and the "unenrolled" voters who may sign nomi-

(Footnote Continued)

February 6, 1982. All enrolled Democrats were eligible to participate in the caucuses.^{/11/} Approximately 100,000 enrolled Democrats did participate in the caucuses that selected the 3,500 delegates to the Endorsing Convention.^{/12/}

^{/10/} (Footnote Continued)

nation papers of a Democratic candidate, see Mass. Gen. Laws ch. 53, §§44, 46 (App. 33, 36). 385 Mass. at 1205, 1207, 434 N.E.2d at 962-63. (emphasis original). To equate the term "party regulars" with the pejorative term "party bosses" and to argue that the Supreme Judicial Court has created a "[h]ierarchy" of political associational rights and has "elevate[d] the political associational rights of party regulars above the rights of all other party members" is misleading. "Regular party members" or "regular members of the party", viz. enrolled party members, sustain the vitality of a political party and are the vanguard to advance the political beliefs and ideas of the party.

^{/11/} To participate in the February 6, 1982 caucuses an individual was required to enroll as a Democrat on or before December 31, 1981.

^{/12/} It is noteworthy that Langone did not obtain nomination papers until March 4,

(Footnote Continued)

On May 21-22, 1982, the Endorsing Convention was held. Five candidates for the office of Lieutenant Governor received at least fifteen percent of the Convention vote cast on one or more ballots: Murphy, Kerry, Nickinello, Pines and Rotondi. The Convention endorsed Murphy. Langone and Pressman failed to receive fifteen percent of the Convention vote on any ballot./13/

On May 25, 1982, the Democratic State Committee notified the State Secretary that the Party endorsed Murphy

/12/ (Footnote Continued)

1982 (Lang. Jur. St. at 17) or announce his candidacy until March 29, 1982, well after the caucuses were held to elect delegates to the Endorsing Convention.

/13/ Langone received 1 percent of the Endorsing Convention vote on the first ballot and less than 1 percent on the second ballot. Pressman withdrew his name from consideration before any ballot was cast.

for Lieutenant Governor and that Kerry, Nickinello, Pines and Rotondi are "eligible to challenge the Convention endorsement in a state Primary election, in accordance with Article Six, Section III, of the Charter."

On the same day that the State Secretary received notification of the Endorsing Convention results, he released a statement which said, in part:

In accordance with the Supreme Judicial Court's [April 23, 1982 advisory] opinion, I am ... unable to place on the state primary ballot the names of two candidates who have filed otherwise-valid Democratic nomination papers for Lieutenant Governor with my office - Frederick C. Langone and Joel M. Pressman.

On May 26, 1982 the Director of Elections sent separate letters to Langone and Pressman informing each of them of the State Secretary's decision.

The ballots for the Democratic state primary were released to the printer on July 9, 1982. The names of five Democratic candidates for Lieutenant Governor who satisfied the "fifteen percent rule" appeared upon the ballots. The names of the two Democratic candidates for Lieutenant Governor who failed to satisfy the "fifteen percent rule" did not appear.

C. OPINION OF THE JUSTICES

On April 23, 1982 the Justices of the Supreme Judicial Court issued a unanimous advisory opinion to the Governor. Opinion of the Justices, 385 Mass. 1201, 434 N.E.2d 960 (1982). There was pending before the Governor for his approval House Bill No. 5852 which would amend Mass. Gen. Laws ch. 53, §44, concerning "[t]he nomination of candidates for nomination at

state primaries."/14/ "Stating his uncertainty 'as to the necessity or constitutionality of H. 5852 if enacted into law'" (385 Mass. at 1202, 434 N.E.2d at 961), the Governor requested the opinion of the Justices./15/ The Justices interpreted one of the two questions posed by the Governor:

. . .to inquire whether, if House No. 5852 were approved, G.L. c.53, §44, as thereby amended, would abridge the constitutional rights of the Democratic party and its

/14/ The first sentence of Mass. Gen. Laws ch. 53, §44 is: "The nomination of candidates for nomination at state primaries shall be by nomination papers." (App. 33). House Bill No. 5852 would amend Mass. Gen. Laws ch. 53, §44 by adding after the first sentence the following sentence: "Notwithstanding any party charter, rule or by-law, any candidate submitting nomination papers pursuant to this chapter shall be a candidate for nomination at the state primary."

/15/ The Governor "may require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions." Mass. Const. Pt. II, c. 3, art. 2.

members to associate by allowing candidates to be placed on the Democratic State primary ballot in contravention of the party's charter. Id. at 1203-04, 434 N.E.2d at 961.

At issue was the "fifteen percent rule." Id. at 1202, 434 N.E.2d at 961. The Justices opined that the rule "adds to the statutory requirement of nomination papers for placement on the primary ballot the further requirement that a candidate must receive at least fifteen percent of the [Democratic Endorsing] convention vote." Id. at 1205, 434 N.E.2d at 962. They concluded that the proposed amendment "would abridge the constitutional rights of the Democratic party and its members to associate." Id. at 1207-08, 434 N.E.2d at 964.

The controlling issue in the case at bar was whether the Supreme Judicial Court would ratify the advisory opinion

upon the factual record in this adversarial context. By its Order issued July 6, 1982 (App. 11), the court did ratify the Opinion of the Justices.

II. THE APPEALS SHOULD BE DISMISSED ON THE GROUNDS THAT THEY DO NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND THAT THE ORDER AND JUDGMENT OF THE SUPREME JUDICIAL COURT IS CORRECT

Appellants' only available remedy for review by this Court is certiorari. See supra pp. 2-6. This Court should not exercise its judicial discretion to review this case because there are no "special and important reasons therefor" and because the Supreme Judicial Court has not "decided an important question of federal law which has not been, but should be, settled by this Court" and has not "decided a federal question in a way in conflict with applicable decisions of this Court." Sup. Ct. R. 17.1.(c).

As demonstrated below, the appeals should be dismissed because "[i]n light

of ... previous decisions" of this Court
"appellants have failed to raise any
substantial federal questions." See,
e.g., Palmer Oil Corp. v. Amerada Corp.,
343 U.S. 390, 391 (1952) (per curiam).
Sup. Ct. R. 16.1.(b), (d).

A. THERE IS NO CONFLICT BETWEEN
THE "FIFTEEN PERCENT RULE" AND
STATUTORY REQUIREMENTS FOR
PRIMARY BALLOT ACCESS

Appellants premise their arguments
on two demonstrably incorrect postulates:
(1) there is a conflict between the
"fifteen percent rule" and statutory
requirements for primary ballot access;
and (2) there is a contest between state
interests and alleged rights of Langone
and Langone supporters. The first,
incorrect postulate is discussed im-
mediately below. The second is dis-
cussed infra pp. 29-35.

The Attorney General's entire
argument is based on the bald assertion

that the "fifteen percent rule" conflicts with the Massachusetts statutory scheme for primary ballot access and that "[t]his case concerns the state's authority to regulate primary elections [sic]." (AG Jur. St. at 11, 12, 15, 18 & n.8, 20). If the "fifteen percent rule" is not eliminated, the Attorney General foresees draconian results. E.g., id. at 14 ("virtual nullification of the primary process"), 27 ("circumvention of the entire primary process"), 31 ("will necessarily, perhaps automatically, divest the state of significant control of ... an 'integral part' of the election process"). Hyperbole can not disguise the inaccuracy of this assertion.

A precise reading of the Opinion of the Justices makes it clear that the Justices did not state that the "fifteen percent rule" superseded the statutory

scheme but that it added a "further requirement" to it. A candidate must still satisfy all statutorily-prescribed filing requirements.^{/16/} The state's unchallenged authority to regulate primaries and elections is not in jeopardy.

But the statutes do not provide the exclusive criteria for Massachusetts Democratic state primary ballot access. The Party has imposed a "further requirement", the "fifteen percent rule." 385 Mass. at 1205, 434 N.E.2d at 962.^{/17/}

/16/ The statutory requirements are as follows: nomination papers signed by at least 10,000 registered voters; written acceptance of nomination; certification of party enrollment; and financial interest statement. Mass. Gen. Laws ch. 53, §§9, 44, 45, 46, 48. (App. 26, 33-42). (AG Jur. St. at 9 n.4; Lang. Jur. St. at 11).

/17/ Massachusetts recognizes the vital role political parties play in the electoral process. It establishes procedures for the election of state committees, Mass. Gen. Laws ch. 52, §1 (App. 19), and empowers such committees to make rules and to call conventions. Mass. Gen. Laws ch. 52, §10 (App. 21).

The Supreme Judicial Court has interpreted and harmonized pertinent state statutes and the "fifteen percent rule" consistent with the rights of association of the Party./18/

/18/ The antiquated state court cases relied on by the Attorney General to support his claim that the "Supreme Judicial Court has reversed a traditional approach used by Courts to resolve conflicts between state law and party rules" (AG Jur. St. at 15-20) warrant little response. The cases cited by the Attorney General each involve a party rule which established a requirement at direct odds with a specific, statutorily-prescribed requirement. The decisions are based on the interpretation and application of state law; federal constitutional rights are not involved. Indeed, most of the cases antedate by decades the recognition by this Court of constitutionally-protected associational rights. See infra pp. 32-33 n.20. The Attorney General avoids any meaningful discussion of two decisions of this Court, Democratic Party of the United States v. Wisconsin, 450 U.S. 107 (1981), and Cousins v. Wigoda, 419 U.S. 477 (1975), two cases which upheld the primacy of a party rule over a state law, by summarily dismissing them in a footnote because they "dealt with seating delegates to a national convention." (AG Jur. St. at 18 n.8).

(Footnote Continued)

B. THERE IS NO CONTEST BETWEEN
STATE INTERESTS AND ALLEGED
RIGHTS OF LANGONE AND LANGONE
SUPPORTERS

The entire argument of Langone and Langone supporters presumes that this case involves a contest between state interests and their alleged rights. The presumption is incorrect. This case resolves a contest only between the constitutionally-recognized associational rights of the Massachusetts Democratic Party, manifested in part by its Charter, and the alleged rights of Langone and Langone supporters.

Langone and Langone supporters complain about a Party rule which is

/18/ (Footnote Continued)

Nothing in the United States Constitution or in this Court's decisions suggests that only national parties are possessed of associational rights. See Developments in the Law - Elections, 88 Harv. L. Rev. 1111, 1210 (1975).

enforced at the Endorsing Convention, "purely a creation of the members of the Democratic party" (AG Jur. St. at 28-29), and which impacts the primary, "a joint meeting of political or municipal parties" under Massachusetts law. Mass. Gen. Laws ch. 50, §1. (App. 18). Thus, the dispute over the "fifteen percent rule" is essentially a private contest between an unsuccessful Democratic candidate and his Party.

Moreover, as Langone and Langone supporters implicitly acknowledge, the "fifteen percent rule" is not subject to constitutional restrictions unless "state action" is present. (Lang. Jur. St. at 21-27). They rely heavily on two of the White Primary Cases, Terry v. Adams, 345 U.S. 461 (1953), and Smith v. Allwright, 321 U.S. 649 (1944). (Lang. Jur. St. at 22-24).

Langone and Langone supporters state that this Court "expressly ruled" in Smith v. Allwright that "a state officer and a political committee ... may [not] properly exclude a candidate's name from a state primary election [sic] ballot on the basis of a rule adopted by a state political party convention." (Lang. Jur. St. at 21-22). They state further that the "Allwright Court ruled that the state may not validly delegate the power to fix qualifications for primary participation to political parties." (Id. at 22-23). These statements are erroneous.

Smith v. Allwright involved an action for damages arising under the Fifteenth Amendment based on the racial exclusion of a voter. 321 U.S. at 650-51. The case did not involve a claim by a political candidate. There

was no ruling concerning the validity of a state delegation of power./19/

Similarly, Terry v. Adams involved racial exclusion of voters proscribed by the Fifteenth Amendment.

In O'Brien v. Brown, 409 U.S. 1 (1972) (per curiam), this Court suggested that the "state action" found in the White Primary Cases should be limited to cases "in which claims are made that injury arises from invidious discrimination based on race." Id. at 4 n.1. See Kester, Constitutional Restrictions on Political Parties, 60 Va. L. Rev. 735 (1974)./20/

/19/ Contrary to the Langone statement, this Court has upheld state delegation of the "power to fix qualifications for primary participation to political parties." Ray v. Blair, 343 U.S. 214 (1952).

/20/ The last of the White Primary Cases decisions was rendered in 1953, five years before this Court's seminal decision in NAACP v. Alabama, 357 U.S. 449 (1958), (Footnote Continued)

This case is readily distinguished from the White Primary Cases and the other principal case cited by Langone and Langone supporters, United States v. Classic, 313 U.S. 299 (1941), which "dealt with the power of Congress to punish [criminal] frauds in primaries '[w]here the state law had made the primary an integral part of the procedure of choice." Ray v. Blair, 343 U.S. 214, 226-27 (1952).

This case does not involve blatant racial exclusion or criminal fraud. It does not involve the type of "state action" apparent in the White Primary Cases and Classic. Similar distinctions

/20/ (Footnote Continued)

which expressly recognized the constitutional protection afforded "association for the advancement of beliefs and ideas." Id. at 460-61. These associational rights were, therefore, not a factor in the White Primary Cases.

were made in Ray v. Blair. In that case mandamus was sought against a state Democratic committee to require it to certify a candidate in the Democratic Party primary. The Party did not certify the candidate because he refused to subscribe to a party pledge. This Court stated:

The issue here ... is quite different from the power to punish criminal conduct in a primary [United States v. Classic] or to allow damages for wrongs to rights secured by the Constitution [Smith v. Allwright]. A state's or a political party's exclusion of candidates from a party primary because they will not pledge to support the party's nominees is a method of securing party candidates in the general election, pledged to the philosophy and leadership of that party.

...

The fact that the primary is a part of the election machinery is immaterial unless the requirement of pledge violates some constitutional or statutory provision. It was the

violation of a secured right
that brought about the Classic
and Allwright decisions. 343
U.S. at 226-27. (emphasis
added)./21/

In sum, this case is an internecine dispute between the Massachusetts Democratic Party and one of its displeased candidates. The reliance of Langone and Langone supporters upon the White Primary Cases and Classic is misplaced.

/21/ The mere fact that a state regulates some aspects of an organization does not make its activities "state action." See, e.g., Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974). There must be a "sufficiently close nexus" between the challenged action and the state regulation. Id. at 351. The "nexus" between Massachusetts and the "fifteen percent rule" is tenuous at best. The Justices of the Supreme Judicial Court have opined that the state may not interfere with the operation and effect of the "fifteen percent rule." Opinion of the Justices, 385 Mass. 1201, 434 N.E.2d 960 (1982). Cf. Ripon Society v. National Republican Party, 525 F.2d 567, 575 (D.C. Cir. 1975) (en banc), cert. denied, 424 U.S. 933 (1976). The "fifteen percent rule" is not transmuted into "state action" by the decision of the State Secretary. Where initiative comes from a private party, as here, no "state action" is present. Jackson, supra, 419 U.S. at 357.

C. LANGONE'S ALLEGED "RIGHT TO
 RUN FOR PUBLIC OFFICE" AND
 "RIGHT OF ACCESS TO THE
 BALLOT" HAVE NOT BEEN VIOLATED

Langone alleges that he has been deprived of an alleged "right to run for public office" and an alleged "right of access to the ballot" in violation of the First Amendment. (Lang. Jur. St. at 28-29). A recent decision of this Court, Clements v. Fashing, 458 U.S. ____, 102 S.Ct. 2836 (1982) (plurality opinion), describes the nature of the alleged "right to run for public office:"

Far from recognizing candidacy as a "fundamental right", we have held that the existence of barriers to a candidate's access to the ballot "does not of itself compel close scrutiny." Bullock v. Carter, 405 U.S. 134, 143 (1972). 102 S. Ct. at 2843.

Assuming arguendo that "state action" is present, see supra, pp. 30-35, Langone's claims are appropriately subject to

standard equal protection analysis. As Mr. Justice Rehnquist noted: "This Court has departed from traditional equal protection analysis in recent years in two essentially separate, although similar, lines of ballot access cases." 102 S.Ct. at 2844.

Those "two lines" of "ballot access cases" are those in which there is an attempt to "exclude certain classes of candidates from the electoral process" either by classifications based on wealth^{/22/} or "classification schemes that impose burdens on new or small political parties or independent candidates."^{/23/}

/22/ E.g., Lubin v. Panish, 415 U.S. 709 (1974) (indigent candidate, \$701.60 filing fee, no other means to primary ballot); Bullock v. Carter, supra, (candidate unable to pay \$8,900 filing fee, no alternative means to primary ballot).

/23/ E.g., Illinois Elections Bd. v. Socialist

(Footnote Continued)

Clearly, Langone's claims fall under neither the "wealth" or "new or small political parties or independent candidates" line of "ballot access cases." /24/

/23/ (Footnote Continued)

Workers Party, 440 U.S. 173 (1979) ("no reason" to impose more stringent requirements on new political parties and independent candidates in Chicago city elections than in Cook County elections), American Party of Texas v. White, 415 U.S. 767 (1974) (only two major parties on absentee ballots; other restrictions upheld); Williams v. Rhodes, 393 U.S. 23 (1968) (signature requirements, early filing date, no provision for independent candidates, "invidiously discriminatory" against new political party).

When a new political party or an independent candidate is involved certain statutory schemes survive even "strict scrutiny." See, e.g., Storer v. Brown, 415 U.S. 724 (1974) (one year party disaffiliation requirement, party members disqualified from signing independent's petition); American Party of Texas v. White, *supra*, (different ballot access method); Jenness v. Fortson, 403 U.S. 431 (1971) (unanimous decision) (five percent of voters must sign independent's nominating petitions).

/24/ Were "strict scrutiny" appropriate here, a "less drastic means" analysis would be

(Footnote Continued)

As this Court held in Clements v. Fashing, "[i]n making an equal protection challenge, it is the claimant's burden to 'demonstrate in the first instance a discrimination against [him] of some substance.'" 102 S. Ct. at 2845. (quoting American Party of Texas v. White). This Court concluded: "Constitutional limitations arise only if the classification scheme is invidious

/24/ (Footnote Continued)

appropriate to assess how the Party can achieve its goals. See Illinois Elections Bd., supra at 185-86. Langone and Langone supporters propose two allegedly less restrictive alternatives: "The party might require that only regular members of the party could sign nomination papers for primary candidates or that only regular party members could vote in the primary." (Lang. Jur. St. at 42-43).

Disenfranchising an entire class of voters, unenrolled party members, is not a less restrictive alternative. Both of the alternatives are also in direct conflict with existing state statutes. See Mass. Gen. Laws ch. 53, §§37, 46. (App. 28, 36).

or if the challenged provision significantly impairs interests protected by the First Amendment." 102 S.Ct. at 2848. (emphasis added).

Here, there is no invidious classification scheme.

More importantly, Langone's alleged "right to run for public office" was not impaired. Although his name did not appear upon the Democratic state primary ballots, Langone was still a candidate for Lieutenant Governor. He sought the nomination of the Massachusetts Democratic Party "by means of pasters or write-ins." Mass. Gen. Laws ch. 53, §§3, 35B and 40. (App. 23, 27, 33). If he had received write-in votes in an amount sufficient to give him a plurality of the votes cast in the primary, he would have been the Party's nominee. Mass. Gen. Laws. ch. 53, §§2, 40. (App. 22, 33).

Thus, the "fifteen percent rule" did not deny Langone his alleged "right to run for public office." /25/

It was Langone who chose to be a Democratic candidate. (Lang. Jur. St. at 17). He rejected alternative avenues of ballot access available to him. A candidate for Lieutenant Governor can secure a place on the election ballot, and obviate the need to run in the state primary, by filing nomination papers as an unenrolled or independent candidate. Mass. Gen. Laws ch. 53, §6. (App. 24). /26/ See Restivo

/25/ The State Secretary also certified Langone for limited public financing. Mass. Gen. Laws ch. 55A, §2. (App. 46).

/26/ The number of nomination papers signatures required of an independent candidate is higher than that required of a political party candidate but this distinction is reasonable. See Socialist Workers Party v. Davoren, 374 F.Supp. 1245 (D. Mass. 1974) (construing Massachusetts statute). See also Jenness v. Fortson, supra.

v. Conservative Party, 391 F.Supp. 813, 818 (S.D.N.Y. 1975) (write-ins and independent candidacy makes ballot access restrictions "minimal restraints").

Whatever may be the status of Langone's alleged "right to run for public office" there simply "is no constitutional right to have one's name printed on the ballot." Beller v. Kirk, 328 F.Supp. 485, 486 (S.D. Fla. 1970) (three-judge court), aff'd sub nom., Beller v. Askew, 403 U.S. 925 (1971). Statutory restrictions more stringent than the "fifteen percent rule" have passed constitutional muster. See Tansley v. Grasso, 315 F.Supp. 513 (D. Conn. 1970) (three-judge court) (twenty percent).

In conclusion, Langone's alleged "right to run for public office" and

"right of access to the ballot" have not been violated. /27/

D. LANGONE SUPPORTERS' ALLEGED
 RIGHTS OF "FREEDOM OF ASSOCIA-
 TION" HAVE NOT BEEN VIOLATED

Langone and Langone supporters allege that the "associational rights of voters generally have also been damaged by" the State Secretary's "refusal to place Langone's name upon the primary ballot." (Lang. Jur. St. at 29-31).

If Langone supporters, all registered voters (Lang. Jur. St. at 10),

/27/ Langone also claims that his alleged rights of "freedom of political expression" and "freedom of association" have been violated. (Lang. Jur. St. at 28-29). Though the labels of the rights are different, the analysis is the same. See Developments in the Law-Elections, 88 Harv. L. Rev. 1111, 1176-77 (1975).

The names of five Massachusetts Democratic candidates for Lieutenant Governor appeared upon the Democratic state primary ballots. These candidates more than adequately represented the beliefs and ideas of the Party and safeguarded Langone's associational rights as a Massachusetts Democrat.

had enrolled as Democrats prior to December 31, 1981 they were free to attend the Democratic caucuses to attempt to elect delegates to the Endorsing Convention who supported Langone's candidacy, see supra pp. 17-18 & n.11. Although Langone's name did not appear upon primary ballots, his supporters were still able to cast write-in ballots for him. Mass. Gen. Laws ch. 53, §3. (App. 23). Surely, the "right to participate equally in the political process and to elect a candidate" "does not mean every voter can be assured that a candidate to his liking will be on the ballot." Lubin v. Panish, 415 U.S. 709, 716 (1974).^{/28/}

^{/28/} The rights of voters are not absolute. "[A]lthough groups of voters have a right to associate and advance a candidate to represent their interests, these associational rights do not seem to require that any particular individual serve as that candidate." L. Tribe, American Constitutional Law at 775 (1978) (emphasis in original). See Developments in the Law-Elections, 88 Harv. L. Rev. 1111, 1177 (1975).

Any candidacy restriction burdens the right to vote in that it restricts the field of candidates and thus limits the voters' freedom of choice. However, restrictions affecting the right to vote must cause a discrimination "of some substance" before a constitutional right is violated. E.g., American Party of Texas v. White, 415 U.S. 767, 781 (1974).

Moreover, this Court has held that not every limitation or incidental burden on the exercise of voting rights is subject to a rigorous standard of review. Bullock v. Carter, 405 U.S. 134, 143 (1972). "The constitutional sensitivity is to denial of access to, or excessive burden upon, any identifiable classification of voters, not to a specific candidate or his supporters." Richards v. Lavelle, 483 F.Supp. 732, 735 (N.D. Ill.), aff'd 620 F.2d 144 (7th

Cir. 1980). Candidate eligibility requirements and ballot access restrictions do not trench upon fundamental rights unless they are so restrictive that they deny a cognizable group a meaningful right to representation. See L. Tribe, American Constitutional Law at 775. (1978).

Langone supporters are hardly an identifiable group viewed in constitutional terms. They cannot seriously claim to be the victims of invidious discrimination. The gravamen of their allegations is simply that the candidate of their choice was not also the choice of a sufficient number of delegates at the Endorsing Convention to deserve a place on the Democratic state primary ballots. A heightened standard of review is inappropriate in this case.

The Langone supporters' alleged

"associational rights of voters" were not violated.

E. IN LIGHT OF PREVIOUS DECISIONS
OF THIS COURT THE APPEALS
SHOULD BE DISMISSED

The opinion explaining the Order and Judgment of the Supreme Judicial Court in this case can be expected to mirror the logic and reasoning of the Opinion of the Justices. In light of previous decisions of this Court, the Opinion of the Justices is correct. Therefore, the Order and Judgment in this case are correct. The appeals should be dismissed.

In assessing the constitutionality of restrictions on ballot access, this Court has administered a balancing test.^{/29/} See, e.g., Illinois Elections Bd. v. Socialist Workers Party,

^{/29/} As previously stated, the presence of "state action" is assumed only arguendo.

440 U.S. 173 (1979). In this case the countervailing interests are the constitutionally-recognized associational rights of the Massachusetts Democratic Party and its adherents and the alleged rights of Langone and Langone supporters.

The Party's protected rights of political association have been recognized as fundamental, Illinois Elections Bd., supra, 440 U.S. at 184, and their presence in this case tips the balance heavily in favor of the "fifteen percent rule."

1. Party Interests

In the April 23, 1982 advisory opinion, the Justices of the Supreme Judicial Court recognized that:

'The [Massachusetts Democratic Party] and its adherents enjoy a constitutionally protected right of political association. "There can no longer be any doubt that freedom to associate with others for the common advancement of political

beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. . . . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." Kusper v. Pontikes, 414 U.S. 51, 56-57 (1973). . . . Moreover, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957); see NAACP v. Button, 371 U.S. 415, 431 (1963). " Cousins v. Wigoda, 419 U.S. 477, 487-488 (1975). "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." Democratic Party of U.S. v. Wisconsin, 450 U.S. 107, 122 n.22 (1981), quoting L. Tribe American Constitutional Law 791 (1978). A determination of who will appear on a general election ballot as the candidate endorsed by an identified political party is a critical decision for that party. The party, therefore, has a substantial interest, implicit in its freedom of association, to ensure that party members have

an effective role in that decision.' Democratic Party of U.S. v. Wisconsin, supra.

Opinion of the Justices, supra, 385

Mass. at 1204, 434 N.E.2d at 962.

In Democratic Party of the United States v. Wisconsin, this Court held that Wisconsin could not constitutionally compel the Democratic Party of the United States to seat delegates chosen in a manner that violated that Party's rules. States have important interests in regulating primary elections, 450 U.S. at 124 n.28 (citing United States v. Classic, 313 U.S. 299 (1941)), however, this Court held that those interests were insufficient to justify a substantial intrusion into the Party's ability to control its own destiny. 450 U.S. at 125-26.

The Party's legitimate interest in ensuring that Party members have an

effective role in determining who the Party's nominee will be is well-served by requiring as a precondition to Party primary ballot access that a candidate demonstrate a "significant modicum of support", Jenness v. Fortson, 403 U.S. 431, 442 (1971), within the party organization. Cf. Clark v. Rose, 379 F.Supp. 73 (S.D.N.Y. 1974), aff'd, 531 F.2d 56 (2d Cir. 1976).

Absent the "fifteen percent rule", to be placed upon the Democratic state primary ballots a candidate need only be an enrolled Democrat and submit nomination papers signed by 10,000 persons, none of whom need be enrolled Democrats. Mass. Gen. Laws. ch. 53, §§46, 48. (App. 36, 38). Voting in party primaries is not limited to party members but includes unenrolled voters who enroll at the polls before receiving ballots.

Mass. Gen. Laws. ch. 53, §37.^{/30/}
(App. 28). Furthermore, voters may
cancel or change their party regis-
tration immediately after voting. Mass.
Gen. Laws ch. 53, §38. (App. 30).
Thus, without the "fifteen percent
rule", a candidate could be placed upon
the Democratic state primary ballots and
win the primary with little or no support
from the Party membership. Opinion of
the Justices, supra, 385 Mass. at 1205,
434 N.E.2d at 962.

In Rodriguez v. Popular Democra-
tic Party, 457 U.S. ___, 102 S. Ct.
2194 (1982), this Court upheld a Puerto
Rico statute which vested in a political
party the authority to appoint an in-

^{/30/} "As of February, 1980, 39.9% of all re-
gistered voters in the Commonwealth were
unenrolled." Opinion of the Justices,
supra, 385 Mass. at 1205 n.1, 434 N.E.2d at
962 n.1 (citation omitted).

terim replacement for one of its members who vacates an elected office. Since the statute did not restrict access to the electoral process or afford unequal treatment to different classes of voters or political parties it survived constitutional scrutiny. "The Party was entitled to adopt its own procedures to select this replacement; it was not required to include non-members in what can be analogized to a party primary election." 102 S.Ct. at 2202./31/

"What is important...is that a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the

/31/ Rodriguez involved a statute. The "fifteen percent rule" is a Party Charter provision. This distinction, however, should weigh in favor of, rather than against, its enforcement. See L. Tribe, American Constitutional Law, 790 n.2 (1978).

protection of the Constitution as much if not more than its condemnation." Ripon Society v. National Republican Party, supra, p. 35 n.21, 525 F.2d at 585 (emphasis original).

"The rights of members of a political party to gather in. . . convention in order to formulate proposed programs and nominate candidates for political office is at the very heart of the freedom of assembly and association. . . ." Cousins v. Wigoda, 419 U.S. 477, 491 (Rehnquist, J., concurring).

In sum, recent decisions of this Court reveal the tremendous deference that must be accorded associational rights of political parties.

2. State Interests

This is a private contest between the Massachusetts Democratic Party and Langone and Langone supporters. However,

the interests of the Commonwealth are relevant and they should be weighed in the balancing test. As argued below, the "fifteen percent rule" fosters several state interests, further tipping the balance in its favor.

The "fifteen percent rule" "has the double effect of limiting the number of candidates on the primary ballot, thereby eliminating the confusion that may result from too many candidates, and of limiting the candidates to those with significant party support, thereby giving the party members an effective role in choosing the party's candidate in the general election." Opinion of the Justices, supra, 385 Mass. at 1205, 434 N.E.2d at 962.

A state has a compelling interest in limiting the number of candidates in order to prevent voter confusion.

American Party of Texas v. White, 415 U.S. 767, 782 n.14 (1974). A political party has a parallel interest. Opinion of the Justices, supra, 385 Mass. at 1206, 434 N.E.2d at 963. The "fifteen percent rule" serves these interests. "Elimination of the Democratic party charter requirement could only increase the number of candidates on the primary ballot, with a resulting increased potential for voter confusion." Opinion of the Justices, supra, 385 Mass. at 1206, 434 N.E.2d at 963.

There is another recognized state interest: assuring that the winner is the choice of a majority, or at least a strong plurality, of those voting.

Bullock v. Carter, 405 U.S. 134, 145 (1972).^{/32/} The winner by a plurality

^{/32/} Langone and Langone supporters take the indefensible position that this state
(Footnote Continued)

of the Democratic primary becomes the Democratic Party nominee at the general election. Mass. Gen. Laws ch. 53, §2. (App. 22). If Langone and Pressman were named upon the state Democratic primary ballots there would have been seven candidates. The chances of a candidate who would not garner a majority, or at least a strong plurality, of the votes cast winning the primary would have been increased.

/32/ (Footnote continued)

interest "is only at stake in the context of primary elections [sic] where there is the prospect of runoff elections which would clog a state's electoral machinery" and that, since Massachusetts law does not provide for a runoff, this state interest is not present. (Lang. Jur. St. at 38-39). Bullock v. Carter, supra, provides no support for this position. In Bullock this Court recognized that ballot access restrictions serve recognized state interests which may include avoiding the "expense and burden of runoff elections." 405 U.S. at 145. The fact that there can be no runoff in Massachusetts buttresses its interest in limiting access to the primary ballot.

Because the state has legitimate reasons for limiting access to the ballot, it may require "some preliminary showing of a significant modicum of support" before printing a candidate's name on the ballot. Jenness v. Fortson, 403 U.S. 431, 442 (1971). The "fifteen percent rule" promotes this interest by identifying those candidates with at least a prescribed minimum level of Party support./33/

The "fifteen percent rule" also furthers the state's compelling interest

/33/ In Restivo v. Conservative Party of New York, 391 F.Supp. 813 (S.D.N.Y. 1975), a statute required a non-party member to obtain party committee authorization to receive the party's nomination or to run in its primary. In upholding the statute, the court observed that the party committee "may be trusted to determine which of several competing non-member aspirants for party nomination can advance the political philosophy of the Party members to best advantage." 391 F.Supp. at 818. See Clark v. Rose, 379 F.Supp. 73 (S.D.N.Y. 1974), aff'd, 531 F.2d 56 (2d Cir. 1976).

in preserving the integrity of the electoral process, Rosario v. Rockefeller, 410 U.S. 752, 761 (1973), by insuring that candidates representing themselves as Democrats support the ideals and goals of the Democratic Party and its membership.

Undeniably, the "fifteen percent rule" derives further support from the Commonwealth's interests.

3. Conclusion

The Massachusetts Democratic Party has made a reasonable choice of how it desires to signal its endorsement and support of its statewide candidates. That choice was respected by the Supreme Judicial Court in light of the previous decisions of this Court.

The appeals should be dismissed.

III. LANGONE'S CLAIM THAT HE DID NOT
RECEIVE FAIR NOTICE OF THE EFFECT
OF THE FIFTEEN PERCENT RULE IS
WITHOUT MERIT

Langone claims that he did not receive fair notice of the ballot access requirements applied to Democratic candidates.^{/34/} He alleges that, prior to April 24, 1982, he believed that the "fifteen percent rule" was not a condition for securing a position on the Democratic state primary ballots. (Lang. Jur. St. at 50). On the facts of

^{/34/} The "fair notice" claim is moot. The 1982 primary and general election are history. It is impossible to grant Langone and Langone supporters the relief they sought from the Massachusetts courts. See Brockington v. Rhodes, 396 U.S. 41, 43-44 (1969) (per curiam); Hall v. Beals, 396 U.S. 45, 47-48 (1969) (per curiam). Moreover, all prospective Democratic candidates, including Langone, can no longer claim ignorance of the "fifteen percent rule" and, consequently, Langone's "fair notice" claim is not "capable of repetition." Cf. Rosario v. Rockefeller, 410 U.S. 752, 756 n.5 (1973) (question is "'capable of repetition, yet evading review'").

this case, Langone's claim is transparent.

The record states that, at a public meeting of the Democratic State Committee held on November 7, 1981, the Committee Chairman announced that the "fifteen percent rule" was in effect. The preliminary "Call to Convention" mailed in December, 1981 included a copy of the Party Charter with the "fifteen percent rule" as Article Six, Section III.

Langone had notice of the controversy surrounding the "fifteen percent rule", and its effect, almost from the inception of his candidacy. He announced on March 29, 1982. Langone was sent a copy of an announcement released by the State Secretary on April 9, 1982 which informed Langone that the Governor had requested the advisory opinions of the Justices. All candidates were invited

to file briefs with respect to the
question of the "fifteen percent rule."
Langone did not accept this invitation.

On April 23, 1982, the Justices rendered their opinions. On April 29, 1982, the State Secretary publicly announced that, in view of the Opinion of the Justices, the "ballot status" of statewide Democratic candidates is "undetermined."

The "Rules of the 1982 Massachusetts Democratic Convention" required that candidates file a statement regarding their support of the platforms and the Party Charter. Langone filed his statement with the Democratic State Committee on May 4, 1982. Langone's statement reveals that he knew that access to primary ballots would be determined by the vote of the Endorsing Convention.

Langone's actions at the Convention provide still further evidence of his understanding regarding the effect of the "fifteen percent rule." He admits that he made strenuous efforts to acquire fifteen percent of the delegate vote.

At the Endorsing Convention the "fifteen percent rule" was the subject of two proposed amendments. An amendment presented to the Convention to delete the "fifteen percent rule" and a second amendment, which would have postponed its effective date to January 1, 1983, were easily defeated.

Until Langone filed his nomination papers with the State Secretary on May 26, 1982, the State Secretary did not know that Langone was a candidate. As soon as he filed, Langone was notified that his name would not appear upon the Democratic state primary ballots.

The import of the facts contained in the record is that the State Secretary endeavored at all times to keep all candidates fully informed and that, in particular, he gave Langone the best notice practicable at the earliest date possible./35/

IV. CONCLUSION

For all of the foregoing reasons, appellee Michael J. Connolly, as he is Secretary of State of the Commonwealth

/35/ The cases cited by Langone and Langone supporters are easily distinguished. Kay v. Mills, 490 F.Supp. 844 (E.D. Ky. 1980), was decided on "void for vagueness" grounds. There is no similar claim here. Briscoe v. Kusper, 435 F.2d 1046 (7th Cir. 1970), and Williams v. Sciafani, 444 F.Supp. 906 (S.D.N.Y.), aff'd without opinion, 580 F.2d 1046 (2d Cir. 1978), stand for the proposition that, where a candidate justifiably relied on a state-adopted custom or practice, the state may not depart from it without giving prior notice to the candidate. There was never any custom or practice of ignoring the "fifteen percent rule." Rather, the "fifteen percent rule" was enforced by the Massachusetts Democratic Party and given effect by the State Secretary at the first opportunity.

of Massachusetts, moves this Court to dismiss the appeals in the above-entitled case or, in the alternative, to deny appellants' requests for review by writs of certiorari.

Respectfully submitted,

John Kenneth Felter,
Counsel of Record
Samuel Hoar
Goodwin, Procter & Hoar
28 State Street
Boston, MA 02109
(617) 523-5700

Counsel for Appellee
Michael J. Connolly,
As He Is Secretary
of State of the
Commonwealth of
Massachusetts

January 5, 1983

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPREME JUDICIAL
COURT FOR SUFFOLK
COUNTY NO.

* * * * *

FREDERICK C. LANGONE, et al.,

Plaintiffs,

FRANCIS X. BELLOTTI, as he
is the Attorney General of
the Commonwealth of
Massachusetts,

Plaintiff-
Intervenor,

v.

MICHAEL J. CONNOLLY, as he
is the Secretary of the
Commonwealth of
Massachusetts, et al.,

Defendants.

* * * * *

PETITION FOR TRANSFER

Pursuant to G.L. c.211, §4A, the
undersigned parties to the above-
captioned action pending in the Superior

Court Department for Suffolk County
(Civil Action No. 55255) petition for
the transfer of the action to this Court
and state the following reasons:

1. The complaints in this action
present the question of whether candidates
for nomination to statewide office must
be placed on the ballot of a state
primary for the Democratic Party upon
compliance with all statutory require-
ments for nomination despite the failure
to receive fifteen percent of the vote
of the party convention as arguably
required by Article Six, Section III of
the "Charter of the Democratic Party of
the Commonwealth."

2. The Justices of the Supreme
Judicial Court referred to and discussed
Article Six, Section III of the "Charter
of the Democratic Party of the Common-
wealth" ("fifteen percent rule") in its

Opinion of the Justices, 385 Mass. 1201 (1982).

All parties hereto pray that this Court declare the rights, duties, status and other legal relations of all parties hereto under the "fifteen percent rule" and G.L. c.52 and 53.

3. In reliance upon said Article Six, Section III and said Opinion of the Justices, the Secretary of State of the Commonwealth decided not to place upon the state primary ballot of the Democratic Party those candidates who did not receive fifteen percent of the convention vote. Plaintiffs in the above-captioned action were each notified by the Director of Elections, by separate letters dated May 26, 1982, that their names would not be placed on the Democratic state primary ballots. This action was commenced in the Superior

Court Department against the Secretary of State bringing into issue the validity and enforcement of the "fifteen percent rule". All parties necessary for the entry of a declaratory judgment to resolve these issues have been joined in this action.

4. The Attorney General of Massachusetts has declined to represent the Secretary of State in this action, and has intervened as a party plaintiff to obtain, in an adversarial context with an appropriate record, a judicial determination of the validity and enforcement of the "fifteen percent rule". (A photostatic copy of the pleadings filed to date in this action are attached hereto.)

5. An actual controversy has arisen and presently exists among all parties hereto concerning the "fifteen

percent rule" and the preparation and provision of the Democratic state primary ballots by the Secretary of State.

6. A prompt declaration of the rights, duties, status and other legal relations of all parties hereto is necessary to prevent voter confusion, to avoid unnecessary interference with the campaigns of the Democratic party candidates, and to allow adequate time to print (and to mail to absentee voters) ballots for the Democratic party state primary. Said ballots must be prepared on or before July 9, 1982.

Accordingly, the transfer of this action, in anticipation of the reservation and report to the Supreme Judicial Court, and an order requiring the completion of the pleadings and the submission of a Statement of Agreed Facts

on or before June 16, 1982 is appropriate.

Thereupon, the reservation and report of this action to the Supreme Judicial Court and a simultaneous filing of briefs on or before June 25, 1982, will facilitate and expedite a prompt judicial resolution.

The parties agree to expedite discovery should that necessity occur.

MICHAEL J. CONNOLLY,
AS HE IS SECRETARY
OF STATE OF THE
COMMONWEALTH OF
MASSACHUSETTS

By his attorneys,

Samuel Hoar, Esq.
Paul F. McDonough,
Jr., Esq.
John Kenneth Felter,
Esq.
28 State Street
24th Floor
Boston, MA 02109
(617) 523-5700

FREDERICK C. LANGONE,
et al

By their attorneys,

Thomas D. Burns, Esq.
James F. Kavanaugh,
Jr., Esq.
John J. McGivney, Esq.
BURNS & LEVINSON
50 Milk Street
Boston, MA 02109
(617) 451-3300

DEMOCRATIC STATE
COMMITTEE

By its attorneys,

James Roosevelt, Jr.,
Esq.
James H. Wexler, Esq.
HERRICK & SMITH
100 Federal Street
Boston, MA 02110
(617) 357-9000

SAMUEL ROTONDI

By his attorneys,

George E. Foote, Esq.
15 Muzzey Street
Lexington, MA 02173
(617) 863-1106

FRANCIS X. BELLOTTI,
AS HE IS THE ATTORNEY
GENERAL OF THE
COMMONWEALTH OF
MASSACHUSETTS,

Alexander G. Gray,
Jr., Esq.
Chief, Elections
Division

E. Michael Sloman
Chief, Governmental
Bureau
Assistant Attorneys
General
One Ashburton Place
20th Floor
Boston, MA 02108
(617) 727-4538

JOEL M. PRESSMAN

By his attorney,

David Berman, Esq.
100 George P. Hassett
Drive
Medford, MA 02155
(617) 395-7520

Dated: June 10, 1982

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
NO. 82-214-Civil

FREDERICK C. LANGONE, et al.,

Plaintiffs,

v.

MICHAEL J. CONNOLLY, et al.,

Defendants.

RESERVATION AND REPORT

I reserve and report to the Supreme Judicial Court for the Commonwealth the following questions of law presented by the above-entitled action:

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to

obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth"?

2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth", but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?

The foregoing questions of law are reserved and reported upon the Complaint, the Complaint of the Attorney General, the Answer and Counterclaim of the Secretary, and the Statement of Agreed Facts executed by the parties, including attachments annexed. The following schedule will be observed by the parties:

(1) The briefs of each party will be filed on June 25, 1982.

(2) The matter is set down for hearing by the full court on June 29, 1982.

/s/ Paul J. Liacos
Associate Justice

DATED: June 18, 1982

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

SJC-2889

At Boston,
July 6, 1982

Frederick C. Langone et al.

vs.

Secretary of the Commonwealth et al.

Order

On June 18, 1982, the Single Justice reserved and reported the following questions of law presented by this action: "1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of

the 'Charter of the Democratic Party of the Commonwealth'? 2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth', but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?"

Upon consideration of the argument and briefs of the parties, we interpret the State statutes in light of the State and Federal constitutions and rule that the Secretary must give effect to the relevant charter provision. Accordingly, we answer the questions reported, "no."

A rescript will issue forthwith
with an opinion or opinions to follow.

By the Court,

/s/ Frederick J. Quinlan

Frederick J. Quinlan

Assistant Clerk

Entered: July 6, 1982

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court for the Commonwealth

At Boston,

July 6, 1982

In the Case No. SJC 2889

FREDERICK C. LANGONE & others

vs.

SECRETARY OF THE COMMONWEALTH & others
pending in the Supreme Judicial Court
Court for the County of Suffolk No.
82-214 Civ.

ORDERED, that the following entry
be made in the docket; viz., --

The reported questions are answered
"No."

By The Court,

/s/ FREDERICK J. QUINLAN,

Asst. Clerk

July 6, 1982

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

FREDERICK C. LANGONE, et al,

Plaintiffs

v.

MICHAEL J. CONNOLLY, et al,

Defendants

JUDGMENT

This matter came on before the Court, O'Connor, J., presiding, on the rescript issued by the Supreme Judicial Court for the Commonwealth and entered in this Court,

It is Ordered and Adjudged as follows:

1. Candidates who have complied with applicable statutory requirements need not appear upon the Democratic

state primary ballots if they failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth.'

2. The decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth,' but otherwise complied with the statutory requirements to have their names placed upon the ballots did not violate the constitutional or statutory rights of the voters, the candidates, or their supporters.

Dated at Boston, Massachusetts,
this 7th day of July, 1982.

/s/ John E. Powers
Clerk of Court

A true copy.

Attest:

7/7/82
Date

/s/ John E. Powers
Clerk

Terms used in chapters fifty to fifty-seven, inclusive, shall be construed as follows, unless a contrary intention clearly appears:

. . .

Political Committee. - "Political committee" shall apply only to a committee elected as provided in chapter fifty-two, except that in chapter fifty-five it shall also apply, subject to the exception contained in section twenty-nine thereof, to every other committee or combination of five or more voters of the commonwealth who shall aid or promote the success or defeat of a candidate at a primary or election or the success or defeat of a political party or principle in a public election or shall favor or oppose the adoption or rejection of a question submitted to the voters.

. . .

Political Party. - "Political party" shall apply to a party which at the preceding biennial state election polled for governor at least three per cent of the entire vote cast in the commonwealth for that office; but when a candidate for governor receives two or more nominations for that office "political party" shall apply only to a party which made a nomination at the preceding state primary and which in said primary polled at least three per cent of the entire vote for nomination for governor therein cast in the commonwealth. With reference to municipal elections and primaries and caucuses for the nomina-

tion of city and town officers, "political party" shall include a municipal party. A political party, as used in this section, shall not include any organization which has been adjudicated subversive under section eighteen of chapter two hundred and sixty-four, nor shall it include the Communist Party.

. . .

Primary. - "Primary" shall apply to a joint meeting of political or municipal parties held under the laws relating to primaries.

. . .

State Election. - "State election" shall apply to any election at which a national, state, or county officer is to be chosen by the voters, whether for a full term or for the filling of a vacancy.

. . .

Two Leading Political Parties. - "Two leading political parties" shall apply to the political parties which elected the highest and next highest number of members of the general court at the preceding biennial state election.

Mass. Gen. Laws ch.52, §1. State Committees; Election, Terms, etc.

Each political party shall, in the manner herein provided, elect a state committee from among its members, enrolled on or before the ninetieth day prior to the last day for filing nomina-

tion papers for state committees with the state secretary. Each state committee shall consist of one man and one woman from each senatorial district, who shall be residents thereof, to be elected at the presidential primaries by plurality vote of the members of the party in the district, and such number of members as may be elected by the state committee as hereinafter provided. Members of said committee elected at the presidential primaries from senatorial districts shall hold office for a period of four years from the thirtieth day next following their election; provided that members of said committee elected in nineteen hundred and seventy-six shall hold office for a period beginning May fifteenth, nineteen hundred and seventy-six and ending on the thirtieth day following the day on which presidential primaries are next held. Members elected by the state committee shall hold office for two years from the date of their election; provided, however, that in no event shall the terms of office of such members extend beyond the term of office of members who were elected at the presidential primaries.

The members of the state committee elected at the presidential primaries shall within ten days after the thirtieth day next following their election, meet and organize by the choice of a chairman, a secretary, a treasurer and such other officers as they may decide to elect; provided that members of said committee elected in nineteen hundred and seventy-six shall meet and organize within ten days after May fifteenth, nineteen hundred and seventy-six; and provided,

further, that the members of the committee shall first meet and organize temporarily by the choice of a temporary chairman and a temporary secretary who shall serve until a permanent chairman and a permanent secretary are chosen, and such committee, while temporarily organized or at any time after its permanent organization, may add to its membership.

The secretary of the state committee shall file with the state secretary, and send to each city and town committee, within ten days after such permanent organization, a list of the members of the state committee and of its officers, and, within ten days after each addition to its membership made subsequently to its permanent organization, a list of the members so added.

A vacancy in the office of chairman, secretary or treasurer of the state committee or in the membership thereof shall be filled by said committee, and a statement of any such change shall be filed as in the case of the officers first chosen.

§10. Committees May Make Rules and Regulations, etc.

A state, city or town committee may make rules and regulations consistent with law, for its proceedings, and a state committee may make rules and regulations, consistent with law, for calling conventions.

At any primary, caucus or convention held under this chapter, each party having the right to participate in or hold the same may nominate as many candidates for each office for which it has the right to make nominations therein as there are persons to be elected to that office, and no more. A party which makes one or more nominations shall be entitled to have the name of each of its candidates printed on the ballot to be used at the ensuing election; but, unless the nomination is made by direct plurality vote in a primary or in several caucuses held in more than one ward or in more than one precinct or group of precincts, a certificate of nomination must be filed as provided in section five.

. . .

§2. Nominations, How Made.

Except in the case of municipal nominations where a city charter or a law applying specially to a particular town otherwise provides, candidates of political parties for all elective offices, except presidential elector, shall be nominated and members of political committees, except as provided in sections one and four of chapter fifty-two, shall be elected, in primaries or caucuses, and the nomination of any party other than a political party, in any district containing more than one ward or town, shall be made by a convention of delegates chosen by caucuses

held under section one hundred and seventeen in the wards and towns of the district for which the nomination is to be made. All nominations and elections in primaries and caucuses shall be by direct plurality vote. No candidates shall be nominated, and no member of a political committee or convention delegate elected, in any other manner than is provided in this chapter or chapter fifty-two.

. . .

§3. Candidate Whose Name is Not Printed on Primary Ballot Must Accept Nomination to Have Name Printed on Election Ballot.

A person whose name is not printed on a state primary ballot as a candidate for an office, but who receives sufficient votes to nominate him therefor, shall, within thirteen days following five o'clock post meridian on the day said primary was held, file in the office of the state secretary a written acceptance of said nomination and a receipt from the state ethics commission verifying the fact that a statement of financial interest has been filed under chapter two hundred and sixty-eight B. A person whose name is not printed on a city or town primary ballot, but who receives sufficient votes to nominate him, shall, within six days from the aforementioned time and day, file a written acceptance of said nomination in the office of the city or town clerk. The name of any such person who fails to file such written acceptance, and such receipt if required, shall not be printed on the

official ballot to be used at the ensuing election. When such acceptance has been filed, it may not thereafter be withdrawn. This section shall be construed to provide that written acceptance of such a nomination at a primary shall be filed as aforesaid within the time herein limited, by any such person whose nomination is finally determined after the expiration of the time so limited, otherwise his name shall not be printed on the ballot at the ensuing election.

§6. Nomination Papers, Contents, Number of Signatures.

Nominations of Candidates for any offices to be filled at a state election. may be made by nomination papers, stating the facts required by section eight and signed in the aggregate by not less than such number of voters as will equal two per cent of the entire vote cast for governor at the preceding biennial state election in the commonwealth at large or in the electoral district or division for which the officers are to be elected; provided, however, that in no event shall the number of signatures required be less than the number required of the candidate of a political party for the same office in the same electoral district or division to have his name placed on the primary ballot as provided for under section forty-four. If in any electoral district or division the aggregate number of signatures required cannot be calculated due to changes in districts or in precinct or ward lines used in the first election after any redistricting, the aggregate number

shall be twice the number required for the office under section forty-four. In the case of the offices of governor and lieutenant governor, only nomination papers containing the names and addresses of candidates for both offices shall be valid. Nominations of candidates for offices to be filled at a city or town election, except where city charters or general or special laws provide otherwise, may be made by like nomination papers, signed in the aggregate by not less than such number of voters as will equal one per cent of the entire vote cast for governor at the preceding biennial state election in the electoral district or division for which the officers are to be elected, but in no event by less than twenty voters in the case of an office to be filled at a town election; provided, however, that no more than fifty signatures of voters shall be required on nomination papers for such town office. At a first election to be held in a newly established ward, the number of signatures of voters upon a nomination paper of a candidate who is to be voted for only in such ward shall be at least fifty.

No person may be nominated as an unenrolled candidate for any office to be filled at a state election, or a city or town election following a primary, if he has been enrolled as a member of a political party, as defined in section one of chapter fifty, during the ninety days prior to the last day for filing nomination papers as provided in section ten.

§9. Certificates of Nomination and
Nomination Papers, Contents, Party
Designations, Etc.; Filing, Acceptance.

Certificates of nomination and nomination papers for state offices shall be filed with the state secretary and he shall forthwith issue to the candidate or other person filing the same a certificate acknowledging the time and date of the receipt thereof. Certificates of nomination or nomination papers for city and town offices shall be filed with the city or town clerk. Any candidate not required by section forty-eight of this chapter to file a certificate of party enrollment shall, on or before the last day provided by law for filing nomination papers, file a certificate from the registrars of voters of the city or town wherein such candidate is a registered voter, certifying that such candidate is a registered voter in such city or town. Said registrars shall issue such a certificate forthwith upon request of any such candidate so registered or of his authorized representative. No nomination paper shall be received or be valid unless the written acceptance of the candidate thereby nominated shall be filed therewith. No nomination paper or certificate of nomination of a candidate for public office, as defined by chapter 268B, shall be accepted by the state secretary nor be valid unless accompanied by a receipt from the state ethics commission verifying the fact that a statement of financial interest has been filed pursuant to the provisions of said chapter 268B.

§13. Withdrawal of Names of Candidates.

A person nominated as a candidate for any state, city or town office may withdraw his name from nomination by a request signed and duly acknowledged by him before a notary public, and filed with the officer with whom the nomination was filed, within the time prescribed by section eleven for filing objections to certificates of nomination and nomination papers and no such requests for withdrawals shall be received after such time has expired. This section shall be in force in any city or town which accepts section one hundred and three A of chapter fifty-four, any special provision of law to the contrary notwithstanding.

§25. Withdrawal of Candidates.

Withdrawals of nominations of persons to be voted for at primaries shall be subject to section thirteen, except that the date from which the time for filing withdrawals shall be computed shall be the last day for filing nomination papers for such primaries, and that the time shall be forty-eight hours in the case of a town primary.

§35B. Notification of Nominee Whose Name Did Not Appear on Printed Ballot of Necessity of Acceptance.

The city or town clerk shall forthwith notify a person who appears to have been nominated by means of pasters or write-ins of the necessity of complying with section three.

§37. Party Enrolment of Voters.

The voting lists used at primaries shall contain the party enrollment of the voters whose names appear thereon established as provided in this section, in section thirty-eight, and in section forty-four of chapter fifty-one. Except as provided by section thirty-seven A, a voter desiring to vote in a primary shall give his name, and, if requested, his residence, to one of the ballot clerks, who shall distinctly announce the same, and, if the party enrolment of such voter is shown on the voting list, the name of the party in which he is enrolled. If the party enrolment of the voter is not shown on the voting list he shall be asked by the ballot clerk with which political party he desires to be enrolled, and the ballot clerk, upon reply, shall distinctly announce the name of such political party and shall record the voter's selection upon the voting list. The ballot clerk shall then give the voter one ballot of the political party in which he is thus enrolled.

After marking his ballot the voter shall give his name, and, if requested, his residence, to the officer in charge of the voting list at the ballot box, who shall distinctly announce the same. If the party enrolment of the voter is shown on the voting list he shall also make announcement of such enrolment and the officer in charge of the ballot box shall, before the voter's ballot is deposited, ascertain that it is of the political party in which such voter is enrolled. If the enrolment of the voter

is not shown on such voting list, the officer in charge of the ballot box shall announce the political party whose ballot the voter is about to deposit, and the officer in charge of the voting list shall repeat the same distinctly and record the same upon such voting list.

The voting lists used at primaries shall be returned to the city or town clerk to be retained in his custody as long as he retains the ballots cast, whereupon such voting lists shall be transmitted to the registrars of voters for preservation for two years, after the expiration of which they may be destroyed. Said officers shall, at any time after the primary, upon receiving a written request therefor signed by any person, furnish a copy of said list to such person upon the payment of a reasonable fee or shall allow such person to examine and copy such list without charge under such supervision as the clerk may reasonably require. The party enrolment of each voter, if any, shall be recorded in the current annual register of voters, and whenever a voter shall establish, cancel or change his enrolment it shall likewise be so recorded. In preparing the current annual register of voters, the party enrolment, if any, of each voter included therein, as shown by the register of voters for the preceding year, shall be transferred thereto. Upon receipt of a written request from a primary candidate or any officer of any ward, town or city committee or duly organized political committee for a copy of the party enrolment list of voters in any city or town, the board of registrars

or the election commissioners, as the case may be, shall prepare said list and shall furnish at once the said list, free of charge, to the party requesting the same and they shall also furnish a copy of said list to any person on payment of a reasonable fee, not to exceed the cost of printing such list.

§38. Voters Enrolled in One Political Party Not to Receive Ballot of Another Political Party, Except etc.

No voter enrolled under this section or section thirty-seven shall be allowed to receive the ballot of any political party except that with which he is so enrolled; but, except as otherwise provided by said section thirty-seven, a voter may, except within a period beginning at ten o'clock in the evening of the twenty-eighth day prior to a state or presidential primary or the twentieth day prior to a special state primary or city or town primary and ending with the day of such primary, establish, change or cancel his enrolment by forwarding to the board of registrars of voters a certificate signed by such voter under the pains and penalties of perjury, requesting to have his enrolment established with a party, changed to another party, or cancelled, or by appearing in person before a member of said board and requesting in writing that his enrolment be so established, changed or cancelled. The processing of an absentee ballot to be used at a primary shall also be deemed to establish the enrolment of a voter in a political party, effective as of the date of said processing. Except as

otherwise provided in section twelve of chapter four, sections one and two of chapter fifty-two, sections twenty-six, forty A and forty-eight of this chapter, such enrollment, change or cancellation shall take effect forthwith following the receipt by said board of such certificate, or such appearance, as the case may be; provided, however, that no such enrollment, change or cancellation shall take effect for a state or presidential primary during the twenty-eight days prior to that primary or for a special state primary or city or town primary during the twenty days prior to that primary. No voter enrolled as a member of one political party shall be allowed to receive the ballot of any other political party, upon a claim by him of erroneous enrolment, except upon a certificate of such error from the registrars, which shall be presented to the presiding officer of the primary and shall be attached to, and considered a part of the voting list and returned and preserved therewith; but the political party enrolment of a voter shall not preclude him from receiving at a city or town primary the ballot of any municipal party, though in no one primary shall he receive more than one party ballot.

At primaries the city or town clerk shall make available within the polling place certificates to enable a voter to change his party enrollment, which shall be in substantially the following form:

Name _____
(Print)

Date _____

Address _____

I hereby request that my political party
enrollment be changed as follows:

From: _____
(Name of party or Unenrolled)

To: _____
(Name of party or Unenrolled)

Signed under the pains and penalties of
perjury.

(Signature)

On the same day as he casts his ballot, the voter may transmit the certificate to the city or town clerk, who shall transmit them as soon as possible after the primary to the board of registrars, to be retained in their custody. The party enrolment of each voter shall be recorded in the current annual register of voters, and whenever a voter shall establish, cancel or change his enrolment it shall likewise be so recorded.

Said board shall forthwith notify each voter transmitting any such certificate that the same has been received and that his enrolment has been established, changed or cancelled in accordance with his request or that said certificate is void and of no effect, if such be the case.

§40. Number of Votes Needed to Nominate
by Pastors, etc.

No person who is a candidate at a primary for nomination for or election to a political office, and whose name is not printed on the ballot therefor, shall be deemed to be nominated or elected unless he receives a number of votes at least equal to the number of signatures which would be required by law to place his name on the ballot at such primary as a candidate as aforesaid.

§44. Nomination Papers, Number of
Signatures.

The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of the governor, lieutenant-governor, attorney general and United States senator, nomination papers shall be signed in the aggregate by at least ten thousand voters; in the case of the state secretary, state treasurer and state auditor, they shall be signed by at least five thousand voters. Such papers for all other offices to be filled at a state election shall be signed by a number of voters as follows: for representative in congress, two thousand voters; for councillor, district attorney, clerk of courts, register of probate, register of deeds, county commissioner, sheriff and county treasurer, one thousand voters, except that in Barnstable, Berkshire, Franklin, and Hampshire counties such papers for nomination to the office of clerk of courts, register of probate, register of deeds, county commissioner, sheriff and

county treasurer shall be signed by five hundred voters; for state senator, three hundred voters; for representative in the general court and commissioners to apportion Suffolk county, one hundred and fifty voters. If ten per cent of the number of voters in the respective district who are enrolled in the party whose nomination the candidate seeks is a lesser number than the number otherwise required by the preceding sentence, then the number of voters required shall be such ten percent or shall be fifty per cent of the number of voters otherwise required by the preceding sentence, whichever is greater.

§45. Nomination Papers; Contents, Qualifications of Signers, Acceptance, Number of Candidates; Penalty for False Statement.

Every nomination paper shall state in addition to the name of a candidate, (1) his residence, with street and number thereof, if any, (2) the office for which he is nominated, and (3) the political party whose nomination he seeks. This information, in addition to the district name or number, if any, shall be stated on the nomination papers before any signature of a purported registered voter is obtained and the circulation of nomination papers without such information is prohibited. The candidate may state, on one or more nomination papers, in not more than eight words, any of the following public offices which he holds or has held: those offices which are voted for at state primaries, mayor, city councillor, alderman, town councillor, selectman,

and school committee member and moderator. The statement shall clearly indicate that he is a former incumbent thereof if such is the case and, if he is an elected incumbent of an office for which he seeks renomination that he is a candidate for such renomination. If he is a veteran, as defined in section one of chapter thirty-one, the word "veteran" may be included in the eight word statement.

Signatures shall be subject to section seven, and every voter may sign as many nomination papers for each office as there are persons to be nominated therefor or elected thereto, and no more.

A nomination paper shall be valid only in respect to a candidate whose written acceptance is thereon; provided, however, that a candidate for ward or town committee who accepts nomination for such office more than once shall withdraw from all but one such nomination paper or shall be disqualified.

No nomination paper for use in the nomination of candidates to be voted for at state primaries shall contain the name of more than one candidate.

Whoever knowingly subscribes falsely to a statement on a primary nomination paper shall be punished by a fine of not more than fifty dollars.

§46. Nomination Papers; Certification;
Correction of District Designation;
Limitation on Candidates.

Every nomination paper of a candidate for a city or town office shall be submitted, on or before five o'clock post meridian of the seventh day preceding the day on which it must be filed, to the registrars of the city or town in which the signers appear to be voters. Every nomination paper of a candidate for state office shall be submitted on or before five o'clock post meridian of the twenty-eighth day preceding the day on which it must be filed with the state secretary to the registrars of the city or town in which the signers appear to be voters. Every nomination paper of a candidate for president at the presidential primaries shall be submitted to said registrars on or before five o'clock post meridian of the fourteenth day before the final date for filing said papers with the state secretary and certification of said papers shall be completed no later than the seventh day before the final day for filing said papers with the state secretary. Nomination papers for candidates for state, ward, and town committees shall be submitted to said registrars on or before five o'clock post meridian on the eleventh day before the final day for filing with the state secretary and certification shall be completed no later than the fourth day before the final day for filing said papers with the state secretary. Each nomination paper shall be marked with the date and time it was submitted and such papers shall be certified in order of submis-

sion. Said registrars shall check each name to be certified by them on the nomination paper and shall forthwith certify thereon the number of signatures so checked which are names of voters both in the city or town and in the district for which the nomination is made, and who are not enrolled in any other party than that whose nomination the candidate seeks, and only names so checked shall be deemed to be names of qualified voters for the purpose of nomination. The registrars shall place next to each name not checked symbols indicating the reason that name was disqualified. The certification of voters shall be signed by a majority of the board of registrars.

The registrars shall inform the candidate submitting such papers if the designation of the district only in which he seeks office is incorrect, and shall give said candidate the opportunity to insert the correct designation on such papers before the signatures are certified. The registrars shall, if the candidate so desires, allow a change of district on the nomination papers in the presence of the candidate whose name appears on the nomination papers, and the registrar and the candidate shall both initial the change of district so made and further shall in writing explain the change of district causing three copies to be made, one of each for the registrar and candidate and one to be attached to the nomination papers. If the correct district designation is not so inserted, the nomination papers shall not be approved. In no case may a correction be made to change the office for which such candidate is nominated.

The provisions of section seven relative to the number of names to be certified and received, and, except as otherwise provided in this section, the provision relative to time of certification shall apply to such papers. For the purpose of certifying the names on primary nomination papers the registrars shall hold meetings on the four Tuesdays next preceding the seventh day before the final day on which such papers are required to be filed with the state secretary, except that for primaries before special elections the meetings shall be held on the two Tuesdays next preceding such date, and except that for presidential primaries, the meetings for certifying papers for candidates for state, ward, and town committees shall be held on the four Tuesdays next preceding the fourth day before the final day for filing said papers with the state secretary, except that the fifth Tuesday shall be substituted for that Tuesday on which any city or town holds its local election.

No person shall be a candidate for nomination for more than one office; but this shall not apply to candidates for membership in political committees.

§48. Nomination Papers; Last Day for Filing; Certificate Prerequisite to Printing Name on Ballot; Change of Party Enrollment.

Nomination papers of candidates to be voted on at presidential primaries except candidates for state, ward and town committees, shall be filed with the state secretary on or before the first

Friday in January preceding the day of the primaries.

Nomination papers of candidates for election to state, ward and town committees at presidential primaries shall be filed with the state secretary on or before the third Tuesday in November of the year preceding said presidential primaries.

All certificates of nomination and nomination papers of candidates for the office of state representative, state senator, executive council, or county office shall be filed with the state secretary on or before the last Tuesday in May of the year in which a state election is to be held. Certificates of nomination or nomination papers for the office of senator in congress, representative in congress, governor, lieutenant governor, attorney general, treasurer and receiver general, state auditor and state secretary, shall be filed on or before the first Tuesday in June of the year in which a state election is to be held. In the case of primaries before special elections, such nomination papers shall be filed on or before the fifth Tuesday preceding the day of the primaries. The state secretary shall forthwith issue to the candidate or other person filing such nomination papers a certificate acknowledging the time and date of the receipt thereof.

There shall not be printed on the ballot at the state primary the name of any person as a candidate for nomination for any office to be filled by all the voters of the commonwealth, or for

representative in congress, governor's councillor, senator in the general court, representative in the general court, district attorney, clerk of court, register of probate and insolvency, register of deeds, county commissioner, sheriff, or county treasurer, unless a certificate from the registrars of voters of the city or town wherein such person has been a registered voter for more than ninety days and that he has been enrolled as a member of the political party whose nomination he seeks on or before the ninetieth day prior to the last day herein provided for filing nomination papers with the state secretary is filed with the state secretary on or before such filing deadline. Said registrars shall issue such a certificate, signed by a majority thereof, forthwith upon request of any such candidate so enrolled or of his authorized representative. Said registrars of voters shall issue such certificate to any person seeking the nomination of a political party, who is a newly registered voter of that city or town enrolled in that political party and who has not been an enrolled member of another political party during the year preceding the last day for filing nomination papers with the state secretary. No such certificate shall be issued to any person who is a candidate for nomination for any such office, if such person has been an enrolled member of another political party during the year prior to the last day for filing nomination papers with the state secretary as provided by this section.

There shall not be printed on the ballot at the state primary the name of any person as a candidate for nomination for any office to be filled by all the voters of the commonwealth, or for councillor, senator, representative to the general court, representative in congress, district attorney, clerk of court, register of probate and insolvency, register of deeds, county commissioner, sheriff, or county treasurer, unless a certificate from the registrars of voters of the city or town wherein such person is a registered voter that he is enrolled as a member of the political party whose nomination he seeks is filed with the state secretary on or before the last day herein provided for filing nomination papers. Said registrars shall issue such a certificate, signed by a majority thereof, forthwith upon request of any such candidate so enrolled or of his authorized representative. No such certificate shall be issued to any person who is a candidate for nomination for any such office, if such person has changed his party enrollment less than one year prior to the last day for filing nomination papers with the state secretary as provided by this section.

There shall not be printed on the ballot at a city or town primary the name of any person as a candidate for nomination for any office to be filled at a city or town election unless such person has become an enrolled member of the political party whose nomination he seeks on or before the ninetyeth day prior to the last day for submitting primary nomination papers to the re-

gistrars of voters prior to said primary.

The name of a candidate for election to any office who is nominated otherwise than by a political party, generally referred to as an "Unenrolled" candidate, shall not be printed on the ballot at a state election, or on the ballot at any city or town election following a city or town primary, unless a certificate from the registrars of voters of the city or town wherein such person is a registered voter, certifying that he is not enrolled as a member of any political party, is filed with the state secretary or city or town clerk on or before the last day herein provided for filing nomination papers. Said registrars shall issue each certificate forthwith upon request of any such candidate who is not a member of a political party or his authorized representative. No such certificate shall be issued to any such candidate who shall have been an enrolled member of any political party ninety days prior to the last day for filing nomination papers as provided by this section.

§54. Provisions Applying To Pre-Primary Conventions.

Beginning in the year nineteen hundred and fifty-four, a political party shall, upon the call of its state committee, but not later than June fifteenth, in a year in which a biennial state election is held, hold a state convention for the purpose of adopting a platform, electing such number of members at large of the state committee as

may be fixed by the convention, nominating presidential electors in those years in which a United States president is to be chosen and endorsing for nomination candidates for offices to be filled by all the voters of the commonwealth, to be voted for at the ensuing state primary, and for such other purposes consistent with law as the convention may determine. Such convention shall consist of delegates chosen by the ward and town committees. The number of delegates shall be one from each ward and town and one additional for every thousand votes or major fraction thereof cast at the preceding biennial state election, in such ward or town, for the respective party's candidate for governor. Each such ward or town committee desiring representation at such convention shall, within fourteen days after a meeting duly called for the purpose of selecting a delegate or delegates, notify the respective city committee, in the case of a city, or the state committee, in the case of a town, but in no case shall such notice be given less than fourteen days prior to the date appointed for the opening of such convention. No vacancy shall be filled for any reason. Nothing herein contained shall affect or diminish the operation of the laws relating to state primaries contained in sections forty-one to fifty-three A, inclusive.

. . .

§54C.

Every certificate of nomination of candidates endorsed for nomination by a state convention shall state that the

nominee has been endorsed for nomination at such convention and shall include such facts as are required by section eight. Every certificate listing candidates at such convention who received at least twenty per cent of the vote of the convention on any ballot shall also include such facts. Such certificates shall be signed, sworn to and filed as required by section five.

Each such candidate shall, within ten days from the day when the convention terminates, file with the state secretary his written acceptance of the nomination, otherwise his name shall not be printed on the ballot as a candidate for the office to which he was nominated, and he may add the eight-word statement authorized by section forty-five. Such candidate may not withdraw such acceptance.

. . .

§54D.

Delegates shall be seated in groups by senatorial districts as determined by the state committee. The convention shall be called to order by the chairman or acting chairman of the state committee, or in the absence of either, then by a person designated in such manner as the rules of the party shall prescribe. The person who calls the convention to order shall preside until the election of a permanent chairman. He shall appoint a temporary secretary to receive the roll of the convention and a monitor from each group who shall receive the credentials of delegates and present them to the temporary secretary.

The convention shall not proceed to the election of a permanent chairman or transact any business until the time fixed for the opening thereof, nor until a majority of the delegates named in the official roll shall be present. It shall then elect from among its delegates a permanent chairman and a permanent secretary, neither of whom shall be an officer of the state committee, and shall complete its organization. It shall make suitable rules for the conduct of its business, the order of which shall follow the purposes of the convention as stated in section fifty-four. The permanent secretary shall keep the records of the convention and transmit the same to the state secretary who shall retain them for a period of one year.

The permanent chairman and permanent secretary shall be chosen upon a call of the official roll. Committees of the convention shall be appointed by the convention, or by the permanent chairman, as the convention may order. When the vote of the convention is taken upon the election, nomination or endorsement for nomination of any candidate, the roll of the delegates shall be called and each delegate when his name is called shall arise in his place and announce his choice, except that when there is only one candidate to be voted for, the roll need not be called, and except also that the monitor of a group, unless a member of the group objects, may announce the vote of such group.

A delegate to a pre-primary convention who corruptly requests or accepts a

gift or gratuity under an agreement or with an understanding that his vote shall be given for any particular candidate or any person who offers such a gift or gratuity with such understanding or agreement shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days or both.

Mass. Gen. Laws ch. 55A, §2.
Certification of Candidates Qualified
for Statewide Elective Office.

On or before the ninth Tuesday before the primary election in any year in which elections are held for statewide elective office the state secretary shall determine and certify to the director and the state treasurer the names and addresses of all candidates for statewide elective office who qualify for the primary ballot and are opposed by one or more candidates who have qualified for the same ballot in the primary election. For purposes of this chapter any candidate for statewide elective office for whom certificates of nominations and nomination papers have been filed in apparent conformity with law shall be considered qualified for the ballot notwithstanding any objections thereto that may be filed and notwithstanding any vacancy that may occur following the filing of such certificates of nomination and nomination papers other than a vacancy caused by withdrawal of a candidate within the time allowed by law. On or before the fifth Tuesday before the state election in any such year the state secretary shall determine and certify to the

director and to the state treasurer the names and addresses of all candidates for statewide elective office who qualify for the state election ballot and are opposed by one or more candidates who have qualified for the state election ballot. For purposes of this chapter any candidate for statewide elective office for whom certificates of nomination and nomination papers have been filed in apparent conformity with law shall be considered qualified for the ballot, as provided with respect to candidates for the primary election, and any such candidates nominated at the primary election shall be considered qualified for the ballot notwithstanding any objections thereto that may be filed and notwithstanding any vacancy that may occur other than a vacancy caused by withdrawal of a candidate within the time allowed by law. The state secretary shall promptly determine and certify to the director and state treasurer the name and address of any candidate that no longer qualifies for the primary or state election ballot or no longer has opposition because of death or withdrawal or ineligibility for office or because objections to certificates of nomination and nomination papers have been sustained or because of a recount or for any other like reason.